

520 CMR 1.00: ENFORCEMENT OF CIVIL FINES

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Section 1.01 Authority, Purpose, Scope, and Definitions

Purpose and Scope.

- (1) 520 CMR 1.00 is promulgated by the Department of Public Safety pursuant to authority granted by M.G.L. c. 22 § 21 and M.G.L. c. 143 § 65.
- (2) The purpose of 520 CMR 1.00 is to establish reasonable standards for the issuance of civil fines by authorized personnel of the Department.

Commissioner. The Commissioner of the Department of Public Safety.

Department. The Department of Public Safety.

Elevator. Moving stairways, dumbwaiters, moving walks, material lifts and dumbwaiters with automatic transfer devices, wheelchair lifts, automatic people movers and other associated devices, except stair lifts located and installed in residential homes, that are commonly included within the elevator industry.

Section 1.02 Assessment of Fines pursuant to M.G.L. c. 22 § 21.

(1) 520 CMR 1.02 establishes the standards for the assessment of fines pursuant to M.G.L. c. 22 § 21.

(2) The Commissioner or the Commissioner's designee and such other person as may be specifically authorized may issue a written notice of violation, which shall be a written warning or a citation to assess civil monetary fines of not more than \$5,000.

A fine may be imposed for any of the violations identified as follows:

(a) Architectural Access Board

- (i) Authorized individuals who may issue a warning or citation under this section are limited to the Commissioner, the Commissioner's designee, an inspector assigned to the building division, or a designee of the Architectural Access Board.
- (ii) Violations under this section include:

1. Any violation of 521 CMR; and
2. Any other violations of M.G.L. c. 22, § 13A.

(b) Public Warehouses

(i) Authorized individuals who may issue a warning or citation under this section are limited to the Commissioner or the Commissioner's designee.

(ii) Violations under this section include:

1. Maintaining a public warehouse without a license;
2. Disposing of receipt after attachment; and
3. Any other violations of M.G.L. c. 105 § § 1, 2, or 64.

(c) Amusements

(i) Authorized individuals who may issue a warning or citation under this section are limited to the Commissioner, the Commissioner's designee, or an inspector assigned to the building division or the engineering division.

(ii) Violations under this section include:

1. Any violation of 520 CMR 5.00 *et seq.*;
2. Operation or installation of a ride without a permit or license;
3. Failure to present a certificate of examination or liability insurance;
4. Failure to notify the Commissioner of the location and dates of a traveling carnival;
5. Continuing to operate without authorization following an injury;
6. Failure to pay the required fee for investigation following a reportable incident;
7. Failure to notify the Commissioner or the Commissioner's designee of a reportable injury;
8. Failure to notify the Commissioner or to close a device following cancellation or expiration of insurance;
9. Failure to display braking procedures;
10. Failure to maintain records;
11. Failure to obtain/conduct an inspection;
12. Failure to maintain permanent and extensive training, inspection and maintenance policies relative to routine and emergency safety;
13. Failure to employ emergency personnel or ambulance services;
14. Failure to employ a Certified Maintenance Mechanic certified by the Commissioner to oversee operation, maintenance and inspection;
15. Operation of a ride by a minor;
16. Failure to maintain a drug and alcohol policy; and
17. Any other violations of M.G.L. c. 140 § 205A.

(d) Building Division

(i) Authorized individuals who may issue a warning or citation under this section are limited to the Commissioner, the Commissioner's designee, or an inspector assigned to the building division of the Department.

(ii) Violations under this section include:

1. Performing construction supervising without possessing a valid construction supervisor license;
2. Failure of construction supervisor license holder to supervise work;
3. Failure of construction supervisor license holder to produce his license at a job site;
4. Failure of construction supervisor license holder to notify the building official of violations;
5. Noncompliance with notice requirements regarding an unsafe structure;
6. Hindering an inspector from entering a building or enclosure;
7. Knowingly selling, fabricating, assembling, glazing, installing, consenting or causing to be installed glazing materials other than safety glazing materials in, or for use in, any hazardous location; and
8. Any other violations of 780 CMR 110.R.5 or M.G.L. c. 143 § 3V, 9, or 50.

(e) Elevator

(i) Authorized individuals who may issue a warning or citation under this section are limited to the Commissioner, the Commissioner's designee, or an inspector assigned to the elevator division of the Department.

(ii) Violations under this section include:

1. Failure to obtain a permit;
2. Failure to pay the required inspection fee;
3. Failure to arrange annual inspection;
4. Failure to post certificate of inspection;
5. Operating elevator after receiving notice of unsafe condition or removing notice of unsafe conditions;
6. Failure to report unsafe conditions and/or accident;
7. Working without a license; and
8. Any other violations of M.G.L. c. 143 § 65, 71, or 71D; and

(iii) Authorized individuals issuing a citation for failure to arrange for annual inspection, above, may not also cite an owner or operator under section 1.03 below for the same unit.

(f) Recreational Tramways

(i) Authorized individuals who may issue a warning or citation under this section are limited to the Commissioner, the Commissioner's designee, or a designee of the Recreational Tramway Board.

(ii) Violations under this section include:

1. Operation of a recreational tramway without a license;
2. Failure to warn of maintenance or snow-making equipment usage;
3. Failure to mark trail maintenance and emergency vehicles;
4. Failure to mark snow-making hydrant locations;
5. Failure to post the limitations on actions against ski area operators;
6. Failure to maintain signs properly; and
7. Any other violations of M.G.L. c. 143 § 71K or 71N.

(g) Engineering

(i) Authorized individuals who may issue a warning or citation under this section are limited to the Commissioner, the Commissioner's designee, or an inspector assigned to the engineering division of the Department.

(ii) Violations under this section include:

1. Any violation of 520 CMR 6.00 *et seq.*;
2. Operation of hoisting machinery without a license;
3. Allowing an unlicensed person to operate hoisting machinery;
4. Operation of a boiler without inspection;
5. Unsafe operation of a boiler, including excess temperature or pressure;
6. Failure to report boiler location;
7. Removal or tampering with safety appliance or boiler tag;
8. Failure to hold license or certificate of competency to inspect boilers;
9. Failure to provide safety appliance for heating boiler;
10. Failure to display boiler certificate of inspection;
11. Failure to notify of boiler safety defect;
12. Prevention of boiler inspector's entry onto premises;
13. Failure to forward boiler inspection;
14. Failure to pay boiler fees;
15. Insurance company's failure to report cancellation or refusal of insurance on a boiler;
16. Working as a pipefitter without a license;
17. Working as a refrigeration technician without a license;
18. Working as a sprinkler fitter without a license; and
19. Any other violations of M.G.L. c. 146 § § 5-41, 53-54A, 70-80, or 89.

(h) S-Licenses

(i) Authorized individuals who may issue a warning or citation under this section are limited to the Commissioner or the Commissioner's designee.

(ii) Violations under this section include:

1. Working without an S-license;
2. Working with a fraudulent S-license;
3. Working without a certificate of clearance;
4. Working with a fraudulent certificate of clearance;
5. Falsely stating or representing one's self to acquire a certificate of clearance;
6. Allowing an employee to work without a certificate of clearance; and
7. Any other violations of M.G.L. c. 147 § § 57 or 60.

(3) Fines assessed under this section shall be administered as follows:

1. For a first offense, violators will receive a warning or a fine of up to \$1,000 per violation;
2. For a second offense, violators will receive a fine ranging from \$1,000 to \$3,000 per violation;

3. For third and subsequent offenses, violators will receive a fine ranging from \$3,000 to \$5,000 per violation;
4. Unless the violator files an appeal pursuant to 520 CMR 1.04, fines shall be due within 21 days of receipt of the notice of violation.

(4) Factors in determining amount of penalty.

In determining the amount of the administrative penalty, the Department of Public Safety and/or authorized designee shall consider the following factors:

1. The willfulness of the violation;
2. Previous violations resulting in the imposition of administrative penalties;
3. Whether the violation resulted in an accident involving bodily injury or death
4. The actual or potential danger to the public;
5. Whether the violator did everything reasonable to attempt to comply with the law or regulation;
6. Whether imposition of the administrative penalty is likely to deter future noncompliance; and
7. The interests of public safety.

(5) Failure to pay fines. If a violator fails to pay a fine issued pursuant to section 1.02(3), the Department may prohibit the individual from renewing their license and/or sitting for any examination required to obtain a license until such fine has been paid.

Section 1.03 Assessment of Fines for Operation of Elevator Beyond Certificate Expiration Date

- (1) 520 CMR 1.03 establishes the standards for the assessment of fines for operating an elevator after the expiration of its certificate.
- (2) The Department shall fine an owner or operator of an elevator for \$1,000 per day that an elevator is in operation without a valid inspection certificate on the following conditions:
 - i. (a) The owner or operator failed to request an inspection through the means approved by the Department at least 30 days prior to the expiration of the certificate; or
 - (b) The owner or operator did timely request an inspection, but at the time of the inspection after the expiration date, the elevator was determined to be unsafe and was shut down pursuant to M.G.L. 143 c. 65. The fine shall accrue from the date that the unit is determined to be unsafe; and

- ii. An authorized individual from the Department has not already cited the owner or operator for the same unit under section 1.02(2)(e).

(3) Unless the violator files an appeal pursuant to 520 CMR 1.04, fines shall be due within thirty days of receipt of the notice of violation.

(4) Failure to pay fines. If a violator fails to pay a fine issued pursuant to section 1.03, the Department may prohibit the individual from renewing their license and/or sitting for any examination required to obtain a license until such fine has been paid.

Section 1.04 Appeals

(1) 520 CMR 1.04 establishes the appeal process for all fines assessed pursuant to 520 CMR 1.00.

(2) Notice. The Department shall provide written notice of alleged violation(s) and intent to impose administrative penalties to the violator on a Notice form authorized by the Department. The Notice shall specify:

1. The provision(s) of the law or regulation with which there has been non-compliance;
3. The amount that is to be assessed as a penalty for each alleged violation;
4. The procedure for requesting a hearing as set forth in 520 CMR 1.04(3).

(3) Appeals. Warnings are not subject to appeal. Written requests for an administrative appeal must be filed with the Department within thirty calendar days of receipt of the notice of violation issued pursuant to 520 CMR 1.04(2). The Department will conduct an administrative review of the appeal. After review, the Department will either issue a ruling or allow for a hearing pursuant to 801 CMR 1.02. An administrative appeal filed for a fine issued pursuant to Section 1.03 above shall toll the accrual of fines until a final decision is rendered by the Department.

(4) The failure to make a timely appeal constitutes a waiver of the right to appeal and all fines set forth in the notice shall be imposed. Any person aggrieved by a determination of the Department may appeal to the Superior Court in accordance with M.G.L. c. 30A § 14.

REGULATORY AUTHORITY

M.G.L. c. 22 §21; M.G.L. c. 143 § 65